

IN THE SUPREME COURT OF FLORIDA  
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

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INQUIRY CONCERNING A JUDGE No. 12-613

SC13-1333

LAURA M. WATSON

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**Response to the JQC's Motion to Strike Judge Watson's Motion to  
Dismiss/Reject the JQC's Report and Recommendation Because the JQC's  
Admission that Judge Watson Did Not Violate the Code of Judicial Conduct is  
Fatal to Its Claim of Subject-Matter Jurisdiction**

The Honorable Laura M. Watson, by and through undersigned counsel, moves this Court to deny the Judicial Qualifications Committee's ("JQC") Motion to Strike Judge Watson's Motion to Dismiss/Reject the JQC's Report and Recommendation Because the JQC's Admission that Judge Watson Did Not Violate the Code of Judicial Conduct is Fatal to Its Claim of Subject-Matter Jurisdiction ("Motion to Strike"), and as grounds therefore, Judge Watson states as follows:

The JQC essentially asserts three insufficient positions in support of its Motion to Strike. First, the JQC asserts that Judge Watson "already briefed exhaustively" the issues in her motion to dismiss when she filed her Principal Reply Brief. Second, the JQC claims there is no procedural mechanism for filing a motion to dismiss for lack of subject-matter jurisdiction in the Supreme Court.

Third, the JQC maintains that the motion to dismiss is untimely. All three arguments advanced by the JQC must fail.

**A. The JQC's Admission in Its Reply Brief That Judge Watson's Conduct Could Not, As a Matter of Law, Violate the Code of Judicial Conduct Necessitated the Filing of Judge Watson's Motion to Dismiss/Reject for Lack of Subject Matter Jurisdiction.**

As an initial matter, the JQC's assertion that Judge Watson previously briefed the subject-matter jurisdiction issues in her Principal Response Brief is incorrect. Judge Watson's Response Brief was submitted *before* the JQC filed its Reply Brief, in which it finally conceded that, pursuant to this Court's decision in In re Kinsey, 842 So. 2d 77, 85 (Fla. 2003), Judge Watson's conduct *could never* constitute a violation of the Code of Judicial Conduct ("Code").<sup>1</sup> This concession is more than just a finding that Judge Watson was not guilty of violating the Code. Rather, the JQC has admitted that it had no basis upon which to allege any violation of the Code in its Notice of Formal Charges. Therefore, the JQC's claim of subject-matter jurisdiction over Judge Watson now rests upon the argument that it could have issued a Notice of Formal Charges based solely upon alleged violations of the Rules Regulating the Florida Bar regarding conduct that occurred nearly ten (10) years before Judge Watson was even a candidate for judicial office.

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<sup>1</sup> See JQC Reply Br., pp. 30-31 (R. 07/31/2014).

This expansive assertion of the JQC's authority is a matter of first impression before this Court and properly raised in Judge Watson's Motion to Dismiss/Reject.

Therefore, this Court should deny the JQC's Motion to Strike in its entirety.

**B. Judge Watson's Motion to Dismiss/Reject the JQC's Report and Recommendation for Lack of Subject-Matter Jurisdiction is Procedurally Appropriate.**

The Rules of Judicial Administration and the case law cited in Judge Watson's initial motion permit dismissal of a JQC Report and Recommendation for lack of subject-matter jurisdiction. As stated in the Florida Rules of Judicial Administration, the Florida Rules of Appellate Procedure govern all proceedings in the Supreme Court. The Rules of Judicial Administration apply "to administrative matters in all courts" and "[t]hese rules *shall supersede all conflicting rules and statutes.*" Rule 2.110, Fla. R. Jud. Admin. (emphasis added). Rule 2.130 clearly states that "[t]he Florida Rules of Appellate Procedure *shall control all proceedings in the supreme court* and the district courts...notwithstanding any conflicting rules of procedure." (emphasis added). The JQC's reliance on Rule 12(b) of the Florida Judicial Qualifications Commission Rules ("FJQCR") and Fla. R. Civ. P. 1.140(b)(6) is misplaced.

Proper appellate procedure requires that the lower tribunal<sup>2</sup> must have jurisdiction in order for this Court to rule on the merits of the lower tribunal's order on appeal or review. See City of Stuart v. Green, 23 So. 2d 831, 832 (1945). For this proposition in her motion, Judge Watson cited to In re Coleman's Estate, 103 So.2d 237 (Fla. 2d DCA 1958), which relies on this Court's decision in City of Stuart v. Green, 23 So. 2d 831 (1945), in holding that neither this Court, nor any court acting in an appellate capacity, has the jurisdiction to review the merits of an order entered by a tribunal lacking jurisdiction in the first instance. Judge Watson's motion also relied upon In re Deckle, 308 So. 2d 4 (Fla. 1975), wherein this Court dismissed a pending JQC matter finding that the JQC was without jurisdiction to further pursue the case. The JQC's motion to strike fails to address either case.

"The proper method of raising a procedural or jurisdictional bar to an *appellate proceeding* is to file a motion to dismiss the appeal or petition for review." Philip J. Padovano, *Motion Practice in Florida Appellate Courts*, 32 Stetson L. Rev. 309, 325 (2003) (emphasis added). A motion to dismiss may be used on appeal to argue that "the appellate court lacks jurisdiction." Id. Indeed, if

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<sup>2</sup> Rule 9.020 defines lower tribunal as the "court, agency, officer, board, commission, judge of compensation claims, or body whose order is to be reviewed." Rule 9.020 (e), Fla. R. App. P.

an appellate court determines that it lacks subject-matter jurisdiction, “it is [the court’s] duty to *sua sponte* dismiss any appeal where it is clear [the court] lack[s] appellate jurisdiction under the rules.” Dep’t of Prof’l Regulation v. Rentfast, Inc., 467 So. 2d 486, 487 (Fla. 5th DCA 1985) (internal citation marks omitted).

Accordingly, this Court should deny the JQC’s Motion to Strike because Judge Watson’s Motion to Dismiss/Reject the JQC’s Report and Recommendation is the correct procedural mechanism for raising lack of subject-matter jurisdiction.

**C. Judge Watson’s Motion to Dismiss/Reject is Not Untimely.**

Finally, the JQC claims that the motion to dismiss is untimely because the “time for Judge Watson to file a reply brief has expired[.]” See JQC Mot. to Strike, pp. 3 (R. 11/03/2014). This argument is meritless given the fact that the Motion to Reject/Dismiss for Lack of Subject-Matter Jurisdiction is an appellate motion, not a Reply Brief. In fact, Judge Watson has separately filed her Reply Brief pursuant to this Court’s order on November 10, 2014. See Order, (R. 11/10/2014); Judge Watson Reply Br. (R. 11/10/2014). In that Order, this Court implicitly stated that it fully intended to consider the arguments raised by Judge Watson in her Reply Brief.<sup>3</sup> See Order, (R. 11/10/2014).

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<sup>3</sup> Furthermore, as for the JQC’s proposition that this Court should strike Judge Watson’s Motion to Dismiss/Reject the JQC’s Report and Recommendation as

Moreover, as previously stated, subject-matter jurisdiction can be raised at any time and if an appellate court determines that it lacks subject-matter jurisdiction it is its duty to dismiss the appeal. Rentfast, Inc., 467 So. 2d at 487. In appellate practice, the service of certain motions will operate to toll the time schedule of any proceeding in the appellate court. However, pursuant to Rule 9.300(d) of the Florida Rules of Appellate Procedure, motions in the Supreme Court *do not* toll time, “unless accompanied by a separate request to toll time.” Rule 9.300(d)(10). The functioning of this rule caused much uncertainty in this case.

After the JQC’s Reply Brief (R. 07/31/2014), Judge Watson filed a Motion to Toll Time, and a Motion for Extension of Time to file her Reply Brief on August 5, 2014. On August 14, 2014, Judge Watson filed her Motion to Strike the Judicial Qualifications Brief for the Inclusion of Extra-Record Material and Motion for Sanctions and another Motion to Toll Time to file her Reply Brief. Two months later, on October 20, 2014, the Court denied Judge Watson’s Motion to

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untimely, dismissal is an extreme measure and should only after the Court has given the party a warning and an ample opportunity to correct the error. See Altman v. State, 41 So. 3d 1030, 1034 (Fla. 2d DCA 2010) (recognizing that dismissal is an extreme sanction and should only occur after the court has given the party ten days’ notice pursuant to Rule 9.410). No such action was required by this Court.

Strike the JQC's brief and denied the Motion to Toll Time. If the Court had denied the Motion to Toll Time shortly after receipt of the motion, it would have been clear that further proceedings would continue. Instead, the process employed in this case promoted some uncertainty on Judge Watson's part as to whether the time was tolled. Once advised that the Motion to Strike the Judicial Qualification Commission's Brief for the Inclusion of Extra-Record Material and Motion to Toll Time to file her Reply Brief was denied, Judge Watson expeditiously filed her Motion to Dismiss/Reject the JQC's Report and Recommendation and her Reply Brief without delay.

WHEREFORE, this Court should enter an order denying the JQC's Motion to Strike Judge Watson's Motion to Dismiss/Reject the JQC's Report and Recommendation Because the JQC's Admission that Judge Watson Did Not Violate the Code of Judicial Conduct is Fatal to Its Claim of Subject-Matter Jurisdiction. Judge Watson's motion is legally appropriate, procedurally proper, and timely.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the E-Filing Portal on this 13<sup>th</sup> day of November, 2014 to: The Honorable Laura M. Watson, circuit Judge, 17<sup>th</sup> Judicial Circuit, 201 S.E. 6<sup>th</sup> Street, Room 1005B, Ft. Lauderdale, Florida, 33301 (Email: jwatson@17th.flcourts.org and ltucker@17th.flcourts.org) Marvin E. Barkin, Esquire, and Lansing C. Scriven, Esquire, Special Counsel for the JQC, Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A. 101 East Kennedy Boulevard, Suite 2700, Tampa, Florida 33602 (Email: mbarkin@trenam.com; lscriven@trenam.com); Henry M. Coxe, III, Esquire, Bedell, Dittmar, DeVault, Pillans & Coxe, P.A. Attorney for Florida Bar, 101 East Adams Street, Jacksonville, Florida 32202 (Telephone: 904-353-0211; E-



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Pursuant to FJQCR Rule 10(b) a copy is furnished by e-mail to: The Honorable Kerry I. Evander, Chair of the JQC, 300 S. Beach Street, Daytona Beach, Florida 32114 (Email: evanderk@flcourts.org).

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